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# Supreme Court of the United States

October Term, A. D. 1928.

CARSON PETROLEUM COMPANY,

*Petitioner,*

vs.

LEON C. VAIL, Sheriff and Tax Collector of the Parish of St. Charles; R. A. DeBroca, Assessor for the Parish of St. Charles, et al.,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.


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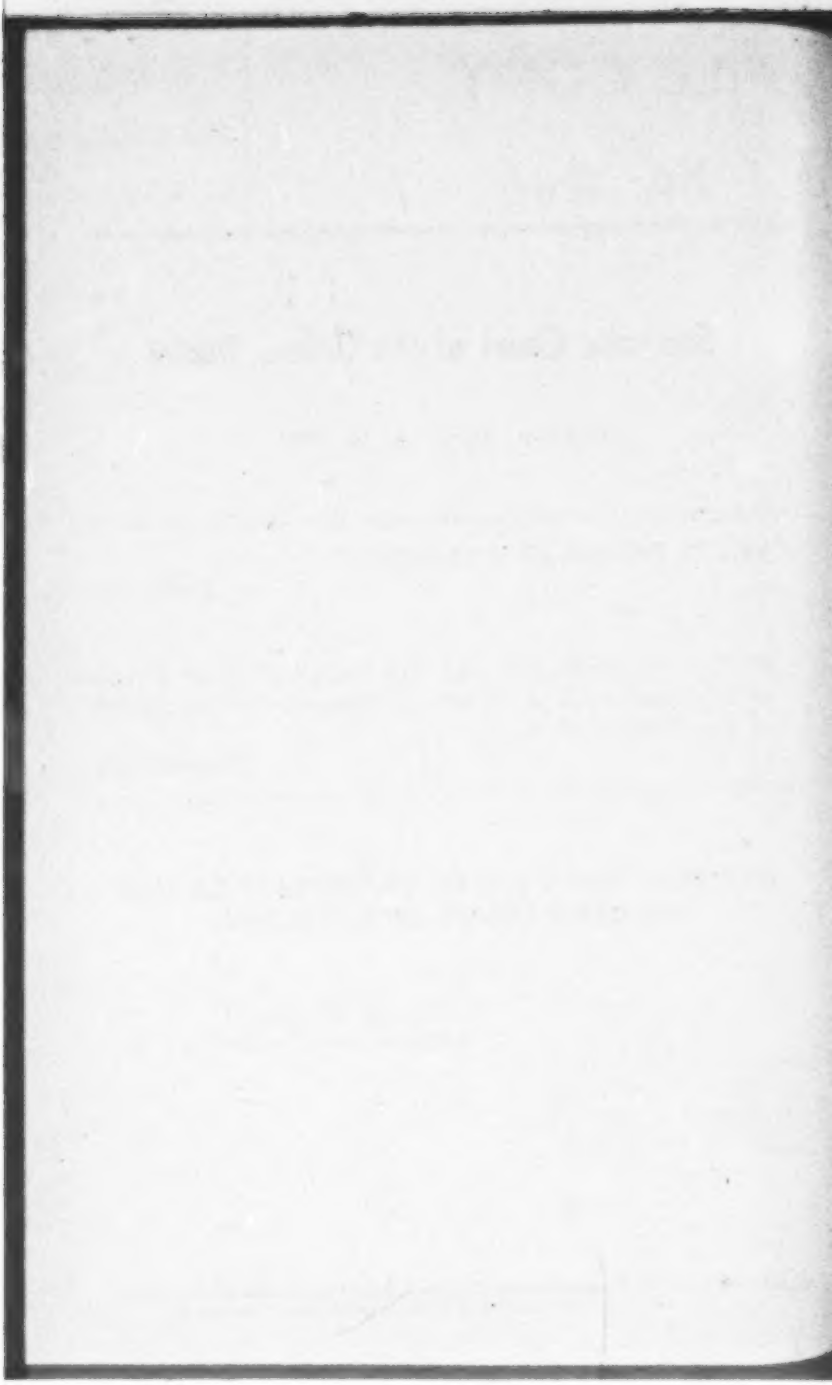

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*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your petitioner hereby respectfully applies for a writ of certiorari addressed to the Supreme Court of Louisiana directing it to certify to this Honorable Court for review and determination the record in a certain cause, No. 28543, entitled *Carson Petroleum Company, appellee, v. Leon C. Vial, et al., appellant.*

By its judgment therein rendered on May 7, 1928, the said Supreme Court of Louisiana reversed a judgment in favor of the petitioner rendered on January 18, 1927, by

the Twenty-fourth Judicial District Court, Parish of St. Charles, State of Louisiana.

By an order entered in said Supreme Court of Louisiana on June 28, 1928, an appeal, with supersedeas, was allowed to this Honorable Court, and on July 25, 1928, a certified transcript of the record was filed in this Court, the record printed and thereafter a statement of the basis of jurisdiction was filed and the cause given No. 306.

By an order entered in this Court on October 15, 1928, the said appeal was dismissed for lack of jurisdiction with leave to file a brief supporting an application for certiorari within fifteen days, ten days for opposing counsel to reply.

The question presented is whether the continuity of the interstate and foreign transportation by the petitioner of merchandise oil from the Mid-Continent Fields in Kansas, Oklahoma and Texas to the European destination was so affected as to make the merchandise oil taxable in the State of Louisiana by the temporary stoppage at the harbor of St. Rose, where the merchandise oil was removed from tank cars to stationary tanks and thence to tank steamers for transportation abroad, in view of the facts:

(a) That no other method of change from land to water transportation was provided;

(b) That the petitioner and its subsidiary, the owner of the stationary tanks, conducted no business of any kind at St. Rose, except to effect the change in the method of transportation from land to water.

The suit brought by the petitioner sought an injunction restraining the laying and levying of an assessment

against merchandise oil in the stationary tanks at St. Rose and restraining the collection of said illegal tax.

The Twenty-fourth Judicial District Court, saying, in the judgment, "the law and the evidence being so clearly in favor of the plaintiff and against the defendants", held the assessment and taxes levied and sought to be collected illegal, null and void (R. 21).

The Supreme Court of Louisiana held that the continuity of the interstate and foreign transportation was interrupted to such an extent that the merchandise oil was subject to taxation by the State of Louisiana.

The petitioner challenges the ruling sustaining the tax on the merchandise oil in the tanks at St. Rose and takes the position that the merchandise oil was in continuous interstate and foreign transportation and as such, under the provisions of the Constitution of the United States, exempt from taxation by the State of Louisiana.

## GROUNDS FOR APPLICATION.

The petitioner asks for this writ upon the following grounds:

FIRST: The laying and levying of an assessment against the merchandise oil at St. Rose under the authority of the General Revenue Law of Louisiana, Act 109 of 1921, entitled

> "To provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation; fixing the rates; and setting forth the purposes for which said levy is made; and prescribing the method of assessing and collecting the same; and enforcing the same thereof."

was repugnant to the following provisions of the Constitution of the United States of America.

Article I, Section 8, Clause 3:

> "The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Article I, Section 9, Clause 5:

> "No Tax or Duty shall be laid on Articles exported from any State."

Article I, Section 10, Clause 2:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the Net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

SECOND: The decision of the Supreme Court of Louisiana is not in accord with applicable decisions of this Court in, among others:

(a) *Hughes Bros. Timber Co. v. Minnesota, 272 U. S. 469,* a tax case, in which this Court held, with respect to timber wood cut at various places in Minnesota from which it was hauled to the Swamp River and piled upon the ice and river banks and from there floated, when the ice broke, to the Pigeon River booms and then shipped by a vessel to Michigan, that the change in the method of transportation by floating to carriage on a vessel did not affect the continuity of interstate passage.

(b) *Champlain Realty Co. v. Brattleboro, 260 U. S. 366,* also a tax case, in which this Court held that pulp wood, floated from one state to another and held in one river because the high water made it unsafe to let the

logs enter the second river at the time of their arrival at the junction of the two rivers, was not subject to state taxation for the reason that the continuity of the interstate trip was not broken, the interruptions being only to promote the safe or convenient transit.

THIRD: The decision of the Supreme Court of Louisiana is not in accord with applicable decisions of other state courts in, among others:

(a) *State v. Engle, 34 N. J. L. 423,* in which the Court held that coal mined in Pennsylvania and sent by railroad cars to Elizabethport, New Jersey, to be thence shipped by water to points outside of the State, was not taxable during the time it remained on the dock at Elizabethport for change in the method of transportation.

(b) *State v. Carrigan, 39 N. J. L. 35,* in which the Court held that coal mined in Pennsylvania transported by rail to tide water at Port Johnson, New Jersey, and there deposited on the dock for re-shipment to points in other states, was coal in the course of transit and as such not taxable.

FOURTH: The decision involved is one of importance affecting the export trade in the United States which is in the public interest to have decided by this Honorable Court.

*Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251;*
*Magnum v. Coty, 262 U. S. 159.*

A brief statement of the facts will disclose the error of the Supreme Court of Louisiana in holding that the merchandise oil was not in continuous interstate and foreign transit as defined by this Honorable Court, and therefore, subject to taxation by the state.

## BRIEF STATEMENT OF FACTS.

The state authorities of Louisiana for the year 1923 assessed merchandise oil of the petitioner at St. Rose in the sum of $200,000.00 (R. 20).

The business of petitioner is buying gasolene, kerosene and various petroleum products for shipment for export (R. 8). In the conduct of that business the first step is the taking of an order from a foreign buyer. The petitioner then goes into the Mid-Continent Field in Kansas, Oklahoma and Texas (R. 9) and makes purchases from various refineries of a gasolene manufactured especially for export and of a much higher gravity than is used in the domestic trade (R. 13). The product is then shipped by railroad to St. Rose, Louisiana, under a bill of lading reading for export and on the lower freight rate provided for export merchandise (R. 14).

Neither the State of Louisiana, the Port Authorities of New Orleans nor the Police Jury of the Parish of St. Charles have provided the requisite and necessary facilities for handling the oil for export (R. 8). The Petroleum Import and Export Corporation has established and constructed on the Mississippi River at St. Rose necessary tanks and other equipment (R. 8).

The merchandise oil, upon arrival at St. Rose by rail, is discharged into the tanks owned by petitioner's subsidiary and there reloaded into a tank steamer as soon as the vessel is available and shipped for export (R. 9). A single vessel cargo requires from three to five hundred tank cars (R. 10). There is no delay or standing of any quantity of gasolene at St. Rose except solely in waiting

for a boat (R. 18). This method is a necessary accommodation in loading foreign merchandise (R. 16).

The petitioner never ships to St. Rose before the merchandise is actually sold to a foreign buyer (R. 10); it has never made a sale in Louisiana (R. 12), and there is no change in the character of the merchandise at St. Rose (R. 18). All of the gasolene at St. Rose was in transit (R. 11).

No evidence of any kind was offered by the respondents.

## BRIEF DISCUSSION OF GROUNDS FOR THIS APPLICATION.

FIRST: The provisions of the Constitution of the United States, to which we have referred, clearly prohibit the States from laying any tax on articles exported except such as may be necessary for executing the state inspection laws.

The title of the General Revenue Law of Louisiana, under which this tax was assessed, does not include the exception contained in the Constitution. The assessment roll shows that the tax was divided for State, Parish, Levee, School and Road purposes (R. 20). It follows, therefore, that if the merchandise oil was in interstate and foreign commerce, then the levying of the tax was in violation of the Federal Constitution and for that reason void.

The uncontradicted evidence shows that the petitioner, first having sold all of the taxed merchandise to foreign buyers, purchased a grade of gasolene manufactured especially for European consumption and that it was shipped

by rail from the Mid-Continent Fields to the plant at St. Rose where it was placed in stationary tanks of the petitioner's subsidiary and then loaded upon tank steamers and continued on its journey to the European destination. The only stoppage at St. Rose was while sufficient gasolene for a cargo was being collected and until a vessel was available for the ocean transportation. It was handled at the point where the overland transportation stopped and the water transportation started, in the only available method for its safe or convenient transit.

The principle announced by this Court in *Hughes Bros. Timber Co. v. Minnesota, 272 U. S. 469,* is exactly analogous to the case at bar. In that case the journey of the logs was made by floating in the Swamp and Pigeon Rivers to the Pigeon River Boom where they were held until they could be loaded upon vessels to continue the journey from one state to another. This Court held that such interruption at the boom did not affect the continuity of the interstate passage, saying at p. 474:

> "The change in the method of transportation by floating to carriage on a vessel did not affect the continuity of the interstate passage, if such passage was intended by the parties and had begun, any more than did shipment by local railroad bills of lading from a point in this state to a port of the same state, for shipment by vessel to a foreign port, prevent its being interstate or foreign commerce."

This Court, in *Champlain Realty Co. v. Brattleboro, 266 U. S. 366,* also held:

> "If the interruptions are only to promote the safe or convenient transit then the continuity of the interstate trip is not broken."

In attempting to apply the holding in the *Brattleboro case*, the Supreme Court of Louisiana overlooked the holding of this Court as to what constitutes continuous passage, and by so doing rendered a decision squarely in conflict with the holdings of this Court.

The Supreme Court of Louisiana primarily based its decision upon *General Oil Company v. Crain, 209 U. S. 211* (R. 26), but, in applying that decision to the instant case, assumed the facts upon which the *Crain case* was decided to be identical with the facts in the present case and lost sight of the following clearly distinguishing features:

(a) In the *Crain case* the oil was imported to Memphis, Tennessee, from other states, and put into a tank for distribution in smaller vessels in other states. On that state of facts this Court held that the first shipment had ended and its stoppage at Memphis for division and distribution was for the business purposes and profit of the company, the tank at Memphis thus becoming a depot in its oil business for preparing the oil for another interstate journey. In the instant case the tanks at St. Rose were not for preparing the oil for another interstate journey, but were merely an implement through which the oil passed in its change from land to water transportation in the journey which started in the Mid-Continent Fields and ended only when the oil, in the exact form in which it had started, reached the foreign shores. In the cited case, therefore, there was a breaking up and distribution to various points. In the instant case there was no breaking up, but a mere passage from tank cars to tank steamers interrupted only so long as was necessary to obtain an available vessel.

(b) Also, in the *Crain case*, the company was doing a local business. No such business was carried on at St. Rose by the petitioner.

The decision of the Supreme Court of Louisiana is, therefore, not in accord with the holding of this Court upon which it purports to be founded.

The Supreme Court of Louisiana entirely overlooked the numerous decisions of this Court squarely holding that a shipment by local railroad bill of lading from a point in a state to a port of the state for shipment by vessel to a foreign port do not prevent its being interstate or foreign commerce, yet in all of those cases there was the necessary delay at the point where the method of transportation changed.

*Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498;*

*Railroad Commission v. Worthington, 225 U. S. 101;*

*R. G. Spalding & Bros. v. Edwards, 262 U. S. 66.*

We respectfully submit that whether the merchandise sought to be taxed is logs which are started on their interstate journey by floating in the water and held at a point along the way because the water in the second river is so high that they cannot safely be turned loose to its fury; whether the merchandise be logs which make the first leg of their journey by floating in a river and are there held to be loaded upon a vessel to continue the interstate journey; whether the merchandise be coal shipped from one state to another by rail and discharged upon a dock to await the arrival of a vessel for transportation to another state *(State v. Engle, 34 N. J. L.; State v. Carrigan, 39 N. J. L. 35)*; or whether the merchandise be gasolene

shipped by rail from one state to another where the gasolene is held to be placed upon a vessel to continue the journey to a foreign destination, makes no difference in the right of the state where the property is temporarily halted in its interstate and foreign journey to place a general tax upon the merchandise. The right to tax is not affected by the fact that logs may remain in the water or that coal may lie upon an open wharf. So, also, the right of the state to tax should not be affected by the fact that that gasolene is a highly volatile substance and must be closely confined. In each case there must be some provision for the safe and convenient transportation of the merchandise. That is what was provided by the petitioner at St. Rose.

The decisions of this Court to which we have made reference are clear that the merchandise is not taxable by the state, provided the interruption is only to promote the safe and convenient transit. The decision of the Supreme Court of Louisiana does not properly apply those decisions of this Court to this case and is in conflict with those decisions.

With no other facilities provided; with no method of transferring the gasolene directly from the tank cars to tank steamers; with the merchandise shipped solely for export and upon the lower export freight rate; with the great quantity of gasolene required to fill a tank steamer; with no change in the character of the gasolene at the point of transfer, and with no local dealing, the interruption in transit was only that absolutely necessary in the transportation from the Mid-Continent to the European destination. The continuous interstate and foreign journey was not thereby broken and local taxation remained prohibited by the Federal Constitution.

As was said by this Court in the case of *Southern Pacific Company v. Arizona, 249 U. S. 472,* the question whether a shipment is interstate commerce is a question of fact and we submit that the facts in the case at bar show conclusively that the petitioner's business at St. Rose is strictly interstate and foreign business.

The Supreme Court of Louisiana has erroneously held that the oil in the tanks at St. Rose was not in continuous transit in interstate and foreign commerce. That ruling is contrary to the facts established by the evidence presented to the trial Court (R. 11) and conflicts with every decision of this Court rendered in a case involving comparable facts.

Your petitioner pleads that the judgment of the Supreme Court of Louisiana holding that the tax was properly assessed is erroneous and that this Honorable Court should require the case to be certified to it for its review and determination.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court directed to the Supreme Court of the State of Louisiana commanding said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the records and all proceedings in the Supreme Court of Louisiana in said case, styled *Carson Petroleum Company, appellee, v. Leon C. Vial, Sheriff and Tax Collector of the Parish of St. Charles, et al., appellants, No. 28543,* to the end that the said case may be reviewed and determined by this Honorable Court as provided in the Judicial Code, Section 237, and that this Honorable Court reverse the judgment of

the Supreme Court of Louisiana, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity with said Judicial Code, and that the judgment of the Twenty-fourth Judicial District Court, Parish of St. Charles, State of Louisiana, in said case, be affirmed by this Honorable Court.

And your petitioner will ever pray.

WILLIAM E. LEAHY,
*Counsel for Petitioner.*

JOHN K. MURPHY,
HARRY A. NEWBY,
HAROLD A. MOISE,
GEO. M. BURDITT,
Of Counsel.

State of Illinois,
County of Cook—ss.

John K. Murphy, being duly sworn, says that he is one of the counsel for the petitioner, Carson Petroleum Company; that he has had charge of this case for the petitioner from the inception thereof; that he assisted in the preparation of the foregoing petition and knows the contents thereof, and that the allegations thereof are true as he verily believes.

John K. Murphy.

Subscribed and sworn to before me by John K. Murphy, this 24th day of October, A. D. 1928.

Bernadette Butler,
Notary Public, Cook County, Illinois.

(Seal)
My commission expires December 6, 1930.

## AFFIDAVIT OF SERVICE.

State of Illinois,
County of Cook—ss.

Geo. M. Burditt, being first duly sworn, deposes and says that he is one of the counsel of the petitioner in the above entitled cause; that on the 24th day of October, 1928, he served a true and correct copy of the foregoing petition upon Harry P. Sneed, the attorney for the respondents therein and a true and correct copy of the transcript of the record in the above entitled cause as printed by and under the direction of the Clerk of the Supreme Court of the United States, by mailing in the United States Post Office at Chicago, Illinois, said copies to the said Harry P. Sneed in a securely sealed, postpaid wrapper, addressed to the said Harry P. Sneed, Whitney Bank Building, New Orleans, Louisiana, that being the true and correct address of said attorney for the respondents.

Geo. M. Burditt.

Subscribed and sworn to before me by Geo. M. Burditt, this 24th day of October, 1928.

Bernadette Butler,
Notary Public, Cook County,
Illinois.

(Seal)
My commission expires December 6, 1930.